

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CLARENCE WILLIAM GARNER,	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO.4:10-CV-598-Y
	§	
RICK THALER,	§	
Director, T.D.C.J.	§	
Correctional Institutions Div.,	§	
Respondent.	§	

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS AND,
TRANSFERRING CASE TO THE
UNITED STATE COURTS OF APPEALS FOR THE FIFTH CIRCUIT

(With special instructions to the clerk of Court)

In this action brought by petitioner Clarence William Garner under 28 U.S.C. § 2254, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on August 26, 2010; and
3. The petitioner's written objections to the proposed findings, conclusions, and recommendation of the United States magistrate judge filed on September 7, 2010.¹

The Court, after **de novo** review, concludes that Petitioner's objections must be overruled, and that the petition for writ of habeas corpus should be transferred to the United States Court of Appeals for the Fifth Circuit, for the reasons stated by the magistrate judge, and for the reasons enunciated in the February

¹On September 7, 2010, Garner filed a document entitled "Brief in Support of 28 U.S.C. § 2254 Application." (doc. 3) A review of this document, however, reveals that Garner prepared this document after the magistrate judge's report and recommendation, and he continues to assert grounds that this Court should accept and review the instant petition under § 2254, contrary to the recommendation. As such, the document should be construed as written objections to the magistrate judge's recommendation, and the clerk of Court is directed to note this on the docket.

11, 2010, Memorandum Opinion and Order of the Court in *Garner v. Thaler*, No. 4:09-CV-564-A.²

Therefore the findings, conclusions and recommendation of the magistrate judge are ADOPTED.

Clarence William Garner's petition for writ of habeas corpus is TRANSFERRED to the United States Court of Appeals for the Fifth Circuit.

SIGNED September 23, 2010.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

²The Court takes judicial notice of this other recent petition under § 2254 filed by Garner, and the detailed discussion of Garner's ongoing claims based upon an incomplete state court record, in the February 11, 2010, Memorandum Opinion and Order issued in that case. See FED R. EVID. 201(B).